

CONTRACT – CAINE COMPUTER CONSULTING, LLC

CITY OF BURLINGAME

AGREEMENT FOR PROFESSIONAL SERVICES

This Agreement for Professional Services (the "Agreement"), originally effective May 1, 2008, and amended to extend the term, is by and between The City of Burlingame, with its principal office in Burlingame, California (hereinafter "Client"), and Caine Computer Consulting, LLC, corporation, with its principal office in Redwood City, California, (hereinafter the "Company").

WHEREAS, Client finds that the Company is willing to perform certain work hereinafter described in accordance with the provisions of this Agreement; and

WHEREAS, Client solicited proposals for information technology services for the Burlingame Police Department, carefully reviewed all three responsive submissions, and determined that Company was the best qualified to perform the services required under this Agreement; and

WHEREAS, Client finds that the Company is qualified to perform the work, all relevant factors considered, and that such performance will be in furtherance of Client's business.

WHEREAS, Company will provides services both onsite and remotely at Company's place of business as the need arises.

NOW, THEREFORE, in consideration of the mutual covenants set forth herein and intending to be legally bound, the parties hereto agree as follows:

1. SERVICES.

1.1 Effective Date and Term. This Agreement is effective as of _____, 2019,

which shall be the date of last signature of the parties. The term of this agreement is from the Effective Date until June 30, 2021.

1.2 Services to Client. The Company shall provide the following ("Services") to Client:

Network/ Computer System Administration
Website Administration
Project Management
Computer Software Management, including but not limited to, the Sunridge Systems software
Email System Management
Telephone System Management
Communications Dispatching
Communications Supervision as necessary
Training and Computer Education to employees
City Projects as needed

New Projects and responsibilities can be added to the above list if mutually agreed upon by the parties.

Company agrees to provide consulting services, such as discussing available options, troubleshooting, recommending solutions and working with employee and equipment vendors as needed.

Client will be responsible for all hardware components. If hardware repair and support is needed, Client agrees to pay for contractor parts and services.

Cabling will be performed by cabling contractors approved jointly by Client and Company and paid for by Client.

Company will work with the equipment vendors to troubleshoot issues and replace components under warranty.

Any purchases made will conform to Client's purchasing policies and procedures.

Company will provide support for workstation software, including the initial installation, re-installation, software upgrades/patches and configuration changes requested by Client. Company support for service software includes the initial installation, re-installation, software upgrades/patches and on-going monitoring of system processes which include daily backup, logs, alarms and alerts. Software loaded on servers and workstations must be approved by Company.

Client will pay for any technical support contracts for third-party software.

Company employee(s) will report directly to the Administrative Commander, a Police Department employee, or his/her designee. Company agrees to keep the Administrative Commander or his/her designee informed of work performed, and upon request, will provide an accounting of work done on projects.

Client will be responsible for purchasing and upgrading software licenses.

Company will provide services both on site and remotely in order to maintain the integrity of the Client's computer systems. If more than two hours work is required to be done after normal business hours (0800-1700) due to an emergency or other after-hours need on any one day, that work may be invoiced in addition to the contract amount, at a rate \$65.00 per hour or another amount which has been mutually agreed upon by both parties. In an emergency, Company shall perform the work required to secure Client's systems and, if feasible, maintain operational status. For emergency work, no pre-authorization by Client is required to perform the minimum

work necessary as described above. For pre-scheduled after hours work or for work beyond the minimum necessary in an emergency, authorization from Client is required before additional work and financial obligations may be incurred under this Paragraph. If both parties agree, normal business hours can be adjusted to meet the needs of both.

Company agrees to be available 24 hours a day, 7 days a week by providing home telephone, business telephone and cellular telephone numbers unless notice has been given otherwise to Client. If Company will not be available, Company will provide a list of alternative support options for Client to call in the event of emergency.

2. PAYMENT AND INVOICING TERMS.

2.1 Payment for Services. The Company will be paid as follows:

\$252,000 for two years to be paid monthly at the rate of \$10,500.00 per month.

Additional payment for specific projects may be negotiated separately and payment may be by hour or by project as mutually agreed upon. Any such modification of the payment terms must be agreed to in writing by the parties.

2.2 Reimbursable Costs. Client shall reimburse the Company direct costs incurred in connection with the Services rendered. Reimbursable costs include, but are not limited to, travel costs, subcontractors, materials and computer costs, copies, delivery, etc. that are necessary to a project or Service (the "Reimbursable Costs"). Travel costs are defined as air travel, lodging, meals and incidentals, ground transportation, tools, and all costs associated with travel. All travel expenses must receive Client's approval. The

Company shall provide to Client substantiation of Reimbursable Costs incurred.

Client will provide all equipment and software necessary for the fulfillment of this contract, at no cost to Company.

2.3 Invoicing.

(a) Invoices will be submitted monthly by the Company for payment by Client. Payment is due upon receipt and is past due thirty (30) business days from receipt of invoice. If Client has any valid reason for disputing any portion of an invoice, Client will so notify the Company within seven (7) calendar days of receipt of invoice by Client, and if no such notification is given, the invoice will be deemed valid. The portion of the Company's invoice that is not in dispute shall be paid in accordance with the procedures set forth herein.

If payment of invoices is not current, the Company may suspend performing further work.

3. CHANGES.

Client may, with the approval of the Company, issue written directions within the general scope of any Services to be ordered. Such changes (the "Change Order") may be for additional work or the Company may be directed to change the direction of the work covered by the Task Order, but no change will be allowed unless agreed to by the Company in writing.

4. STANDARD OF CARE.

4.1 The Company warrants that its services shall be performed by personnel possessing competency consistent with applicable industry standards. No other representation, express or implied, and no

warranty or guarantee are included or intended in this Agreement, or in any report, opinion, deliverable, work product, document or otherwise. Furthermore, no guarantee is made as to the efficacy or value of any services performed or software developed. This Section sets forth the only warranties provided by the company concerning the services and related work product. This warranty is made expressly in lieu of all other warranties, express or implied, including without limitation any implied warranties of fitness for a particular purpose, merchantability, non-infringement, title or otherwise.

4.2 Confidentiality. Company acknowledges that in the course of providing services to Client under this Agreement, it may encounter confidential information such as internal communications, investigatory records, etc. Company agrees not to discuss, disseminate, or fail to preserve as confidential any such information it accesses and that it shall use its best commercially reasonable efforts to preserve the confidentiality of all Client information. Company further agrees to notify Client promptly of any actual or possible breaches, accidental or otherwise, of confidential Client information and take all reasonable steps to cure any such breach.

5. LIABILITY.

5.1 Limitation. Company will provide a Liability and Errors and Omissions insurance policy in the amount of \$1,000,000. Company shall also provide certificates of and endorsements for general liability coverage in the amount of \$1,000,000 per occurrence, \$2,000,000 aggregate, as well as automobile insurance in the amount of \$1,000,000 and workers' compensation insurance in the amount of \$1,000,000 or as required by law. Client shall be named as additional insured on the above insurance, which shall be primary as to Client.

Company is required to provide evidence of and endorsements for such insurance prior to undertaking any work on Client's premises, and shall provide continuing coverage throughout the term of this Agreement. Failure to maintain such insurance shall be deemed a breach of this Agreement and Client may terminate this Agreement under the provisions of Paragraph 6.14. The Company's liability, including but not limited to Client's claims of contributions and indemnification related to third party claims arising out of services rendered by the Company, and for any losses, injury or damages to Client arising out of or in connection with this Agreement, shall be limited to the amount of the policy. Client agrees to limit the Company's liability to Client for any damage on account of any error, omission or negligence to a sum not to exceed the amount of the insurance policy. The limitation of liability set forth herein is for any and all matters for which the Company may otherwise have liability arising out of or in connection with this Agreement, whether the claim arises in contract, tort, statute, or otherwise.

5.2 Remedy. Client shall notify Company in writing of any claim arising out of or relating to this Agreement or any material defect in or failure of services provided by Company as provided in this Agreement, whereupon Company shall (i) use commercially reasonable efforts to cure, at its expense, the matter that gave rise to the claim for which the Company is at fault, or, if such cure is not possible, (ii) return to Client the fees paid by Client to the Company for the particular service provided that gives rise to the claim..

5.3 Indemnification. Company shall indemnify, defend, and hold Client, its directors, officers, employees, agents, and volunteers harmless from and against any and all liability, claims, suits, actions, damages,

and causes of action arising out of, pertaining or relating to the negligence, recklessness or willful misconduct of Consultant, its employees, subcontractors, or agents, or on account of the performance or character of the Services, except for any such claim arising out of the sole negligence or willful misconduct of the City, its officers, employees, agents, or volunteers. It is understood that the duty of Consultant to indemnify and hold harmless includes the duty to defend as set forth in section 2778 of the California Civil Code. Notwithstanding the foregoing, for any design professional services, the duty to defend and indemnify City shall be limited to that allowed pursuant to California Civil Code section 2782.8. Acceptance of insurance certificates and endorsements required under this Agreement does not relieve Consultant from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply whether or not such insurance policies shall have been determined to be applicable to any of such damages or claims for damages.

5.4 Survival. Articles 2, 4, 5, and 6 survive the expiration or termination of this Agreement for any reason.

6. MISCELLANEOUS.

Company may consult with other Vendors as needed and Client agrees to pay the costs thereof, provided that Company shall not share confidential Client information with such outside parties unless specifically approved to do so by Client. All expenditures will be agreed upon before such consultation is sought.

6.1 Insecurity and Adequate Assurances. If reasonable grounds for insecurity arise with respect to Client's ability to pay for the Services in a timely fashion, the Company may demand in writing adequate assurances of Client's ability to meet its payment obligations under this Agreement. Unless Client provides the assurances in a reasonable time and manner acceptable to the Company, in addition to any other rights and remedies available, Company may partially or totally suspend its performance while awaiting assurances, without any liability.

6.2 Severability. Should any part of this Agreement for any reason be declared invalid, such decision shall not affect the validity of any remaining provisions, which remaining provisions shall remain in full force and effect as if this Agreement had been executed with the invalid portion thereof eliminated, and it is hereby declared the intention of the parties that they would have executed the remaining portion of this Agreement without including any such part, parts, or portions which may, for any reason, be hereafter declared invalid. Any provision shall nevertheless remain in full force and effect in all other circumstances.

6.3 Modification and Waiver. Waiver of breach of this Agreement by either party shall not be considered a waiver of any other subsequent breach.

6.4 Independent Contractor. The Company is an independent contractor. No employment relationship or joint venture is intended or created by this Agreement. .

6.5 Notices. Client shall give the Company written notice within one hundred eighty (180) days of obtaining knowledge of the occurrence of any claim or cause of action which Client believes that it has, or may seek to assert or allege, against the Company,

whether such claim is based in law or equity, arising under or related to this Agreement or to the transactions contemplated hereby, or any act or omission to act by the Company with respect hereto. All notices or other communications hereunder shall be in writing, sent by courier or the fastest possible means, provided that recipient receives a manually signed copy and the transmission method is scheduled to deliver within 48 hours, and shall be deemed given when delivered to the address specified below or such other address as may be specified in a written notice in accordance with this Section.

Any party may, by notice given in accordance with this Section to the other parties, designate another address or person or entity for receipt of notices hereunder.

Notices shall be sent to:

For Company:

Ronda Caine Alcantara
Caine Computer Consulting, LLC
274 Redwood Shores Parkway #113
Redwood City, CA 94065
650-888-3240
caine@caineconsulting.org

For City:

Chief of Police
Burlingame Police Department
1111 Trousdale Dr.
Burlingame, CA 94010

6.6 Assignment. This Agreement is not assignable or transferable by either party without written consent of the other party,.

6.7 Disputes. The Company and Client recognize that disputes arising under this Agreement are best resolved at the working

level by the parties directly involved. . Failing resolution of conflicts at the organizational level, the Company and Client agree that any remaining conflicts arising out of or relating to this Contract may be submitted to nonbinding mediation on mutually acceptable terms. Either party may request such mediation by written notice to the other. Failure to act on an alleged breach of this Agreement during proposed or pending mediation shall not be deemed a waiver of any arguments or claims relating to that breach. . If the dispute is not resolved through non-binding mediation, then the parties may take other appropriate action subject to the other terms of this Agreement.

6.8 Section Headings. Title and headings of sections of this Agreement are for convenience of reference only and shall not affect the construction of any provision of this Agreement.

6.9 Representations; Counterparts. Each person executing this Agreement on behalf of a party hereto represents and warrants that such person is duly and validly authorized to do so on behalf of such party, with full right and authority to execute this Agreement and to bind such party with respect to all of its obligations hereunder. This Agreement may be executed (by original or telecopied signature) in counterparts, each of which shall be deemed an original, but all of which taken together shall constitute but one and the same instrument.

6.10 Residuals. Nothing in this Agreement or elsewhere will prohibit or limit the Company's ownership and use of ideas, concepts, know-how, methods, models, techniques, skill knowledge and experience that were used, developed or gained in connection with this Agreement. The Client shall have the right to use all data collected or generated under this Agreement.

6.11 Cooperation. Client will cooperate with the Company in taking actions and executing documents, as appropriate, to achieve the objectives of this Agreement. Client agrees that the Company's performance is dependent on Client's timely and effective cooperation with the Company. Accordingly, Client acknowledges that any delay by Client may result in the Company being released from an obligation or scheduled deadline or in Client having to pay extra fees for the Company's agreement to meet a specific obligation or deadline despite the delay.

6.12 Governing Law and Construction; Venue. This Agreement will be governed by and construed in accordance with the laws of California, without regard to the principles of conflicts of law. The language of this Agreement shall be deemed to be the result of negotiation among the parties and their respective counsel and shall not be construed strictly for or against any party. Venue for any disputes arising out of this Agreement that cannot be resolved informally shall be in the Superior Court for the County of San Mateo, California.

6.14 Termination of Contract. This contract may be terminated upon written notice delivered by either Client or Company not less than Ninety (90) days prior to the termination date. However, Company shall have no rights to compensation for work performed outside of the contracted term as provided in Paragraph 1.1. Client shall have the right to terminate the contract at any time if, in its determination, Company has failed to adequately cure claims or defects for which notice has been provided under Paragraph 5.2 or maintain insurance for the benefit of Client as provided in Paragraph 5.1. Notice of termination shall be provided in writing and shall be deemed received Upon such termination, Company shall be entitled to compensation for all work performed prior to

6.15 Entire Agreement; Survival. This Agreement, including any Exhibits, states the entire Agreement between the parties and supersedes all previous contracts, proposals, oral or written, and all other communications between the parties respecting the subject matter hereof, and supersedes any and all prior understandings, representations, warranties, agreements or contracts (whether oral or written) between Client and the Company respecting the subject matter hereof. This Agreement may only be amended by an agreement in writing executed by the parties hereto. This agreement will remain in force for one year from the date of signing and can be renewed under mutual agreement of both parties.

6.13 Force Majeure. The Company shall not be responsible for delays or failures (including any delay by the Company to make progress in the prosecution of any Services) if such delay arises out of causes beyond its control. Such causes may include, but are not restricted to, acts of God or of the public enemy, fires, floods, epidemics, riots, quarantine restrictions, strikes, freight embargoes, earthquakes, electrical outages, computer or communications failures, and severe weather, and acts or omissions of subcontractors or third parties.

6.14 Use By Third Parties. Work performed by the Company pursuant to this Agreement is only for the purpose intended and may be misleading if used in another context. Client agrees not to use any documents produced under this Agreement for anything other than the intended purpose without the Company's written permission. This Agreement shall, therefore, not create any rights or benefits to parties other than to Client and the Company.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

Date: _____

City of Burlingame

By: _____

Title: _____

Approved as to form:

City Attorney

Caine Computer Consulting, LLC

By: _____

Title: _____